

Attorney Docket No: FSHR028/00US

PATENT

DECLARATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated next to my name;

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

COLLAPSIBLE INFANT SWING

the specification of which:

(check one)

is attached hereto;

was filed as United States Application Serial No. 09/968,498 on October 2, 2001, and was amended on (if applicable);

I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above;

I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information which is known to me to be material to the patentability of said invention in accordance with 37 C.F.R. §1.56;

I hereby claim the benefit under 35 U.S.C. §119(e) of any United States provisional application(s) listed below:

(Application Number)

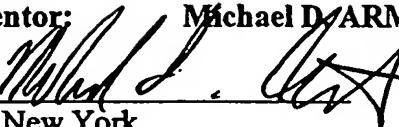
(Filing Date) (day, month, year)

(Application Number)

(Filing Date) (day, month, year)

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first inventor: Michael D. ARMBRUSTER

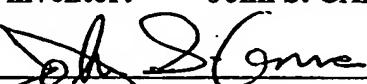
Inventor's signature  Date 11/19/01

Residence: Buffalo, New York

Citizen of: United States

Post Office Address: 455 Parkside Avenue, Buffalo, New York 14216

Full name of second inventor: John S. CANNA

Inventor's signature  Date 11/19/01

Residence: Orchard Park, New York

Citizen of: United States

Post Office Address: 105 Franklyn Street, Orchard Park, New York 14127

Full name of third inventor: Michael T. KANE

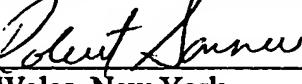
Inventor's signature  Date 11/19/01

Residence: Conesus, New York

Citizen of: United States

Post Office Address: 5848 East Lake Road, Conesus, New York 14435

Full name of third inventor: Robert SONNER

Inventor's signature  Date 11/19/01

Residence: South Wales, New York

Citizen of: United States

Post Office Address: 5340 Merlau Road, South Wales, New York 14139

Attorney Docket No: FSHR028/00US

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of Michael D. ARMBRUSTER et al.

Serial No.: 09/968,498

Examiner: Unassigned

Confirmation No.: 7927

Art Unit: 3712

Filed: October 2, 2001

For: COLLAPSIBLE INFANT SWING

Commissioner for Patents
Washington, D.C. 20231

POWER BY ASSIGNEE
AND STATEMENT UNDER 37 C.F.R. §3.73(b)

The Assignee of the entire right, title, and interest in the above-identified application hereby grants the registered practitioners of Cooley Godward LLP included in the Customer Number provided below power to act, prosecute, and transact all business in the U.S. Patent and Trademark Office in connection with this application, any applications claiming priority to this application, and any patents issuing therefrom.

The Assignee certifies that to the best of its knowledge and belief it is the owner of the entire right, title, and interest in and to the above-identified application as evidenced by:

- An assignment document, a copy of which is enclosed herewith;
- An assignment previously recorded in the U.S. Patent and Trademark Office at Reel ___, Frame ___.

COPY

Please direct all telephone calls and correspondence to:

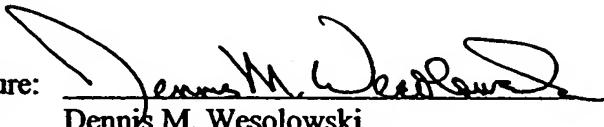
COOLEY GODWARD LLP

ATTN: Patent Group
One Freedom Square
Reston Town Center
11951 Freedom Drive
Reston, VA 20190-5601
Tel: (703) 456-8000
Fax: (703) 456-8100

CUSTOMER NUMBER: **022903**

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of the Assignee.

Date: 11-19-01

Signature: 
Name: Dennis M. Wesolowski
Title: Assistant Secretary
Company: Mattel, Inc.

COPY

Attorney Docket No: FSHR-028/00US

PATENT

ASSIGNMENT
(Joint)

Michael D. ARMBRUSTER, John S. CANNA, Michael T. KANE and Robert SONNER, residing at 455 Parkside Avenue, Buffalo, New York 14216; 105 Franklyn Street, Orchard Park, New York 14127; 5848 East Lake Road, Conesus, New York 14435; and 5340 Merlau Road, South Wales, New York 14139, respectively (hereinafter each referred to as "Assignor") have made an invention(s) relating to certain new and useful improvements in:

COLLAPSIBLE INFANT SWING

set forth in an application for Letters Patent of the United States, which is a

- (1) provisional application
 - (a) to be filed herewith; or
 - (b) bearing Application No. , and filed on ; or
- (2) non-provisional application
 - (a) having an oath or declaration executed on prior to filing of application; or
 - (b) bearing Application No. 09/968,498, and filed on October 2, 2001; and

WHEREAS, Mattel, a corporation duly organized under and pursuant to the laws of Delaware, and having its principal place of business at 333 Continental Boulevard, El Segundo, CA 90245 (hereinafter referred to as "the Assignee"), is desirous of acquiring the entire right, title, and interest in and to said invention(s), the right to file applications on said invention(s) and the entire right, title and interest in and to any applications, including provisional applications for Letters Patent of the United States or other countries claiming priority to said application, and in and to any Letters Patent or Patents, United States or foreign, to be obtained therefor and thereon;

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and sufficient consideration, the receipt of which is hereby acknowledged, the Assignor has sold, assigned, transferred, and set over, and by these presents does sell, assign, transfer, and set over, unto the Assignee, its successors, legal representatives, and assigns the entire right, title, and interest in and to the above-mentioned invention(s), the right to file applications on said invention(s) and the entire right, title and interest in and to any applications for Letters Patent of the United States or other countries claiming priority to said applications, and any and all Letters Patent or Patents of the United States of America and all foreign countries that may be granted therefor and thereon, and in and to any and all applications claiming priority to said applications, divisions, continuations, and continuations-in-part of said applications, and reissues and extensions of said Letters Patent or Patents, and all rights under the Paris Convention for the Protection of Industrial Property, the same to be held and enjoyed by the Assignee, for its own use and behalf and the use and behalf of its successors, legal representatives, and assigns, to the full end of the term or terms for which Letters Patent or Patents may be granted as fully and entirely as the same would have been held and enjoyed by the Assignor had this sale and assignment not been made;

COPY

AND for the same consideration, the Assignor hereby covenants and agrees to and with the Assignee, its successors, legal representatives, and assigns, that, at the time of execution and delivery of these presents, the Assignor is a lawful owner of the entire right, title, and interest in and to the invention(s) set forth in said applications and said applications, including provisional applications, above-mentioned, and that the same are unencumbered, and that the Assignor has good and full right and lawful authority to sell and convey the same in the manner herein set forth;

AND for the same consideration, the Assignor hereby covenants and agrees to and with the Assignee, its successors, legal representatives, and assigns that the Assignor will, whenever counsel of the Assignee, or the counsel of its successors, legal representatives, and assigns, shall advise that any proceeding in connection with said invention(s) or said applications for Letters Patent or Patents, or any proceeding in connection with Letters Patent or Patents for said invention(s) in any country, including interference proceedings, is lawful and desirable, or that any application claiming priority to said application, division, continuation, or continuation-in-part of any applications for Letters Patent or Patents, or any reissue or extension of any Letters Patent or Patents to be obtained thereon, is lawful and desirable, sign all papers and documents, take all lawful oaths, and do all acts necessary or required to be done for the procurement, maintenance, enforcement and defense of Letters Patent or Patents for said invention(s), without charge to the Assignee, its successors, legal representatives, and assigns, but at the cost and expense of the Assignee, its successors, legal representatives, and assigns;

AND the Assignor hereby authorizes and requests the attorneys of COOLEY GODWARD L.L.P. to insert in the spaces provided above the filing date, application number, the dates of execution of the oath or declaration, and attorney docket number of said application when known;

AND the Assignor hereby requests the Commissioner of Patents to issue any and all said Letters Patent of the United States to the Assignee, as the Assignee of said invention(s) and the Letters Patent to be issued thereon for the sole use and behalf of the Assignee, its successors, legal representatives, and assigns.

COPY

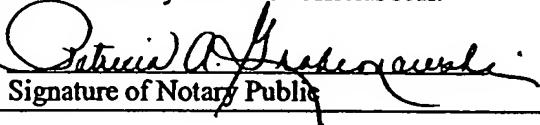
Date: 11/19/01By: 

Michael D. ARMBRUSTER

State of New York ss.
County of Clerk

On November 19, 2001, before me, PATRICIA A. GRABIANOWSKI, personally appeared MICHAEL D. ARMBRUSTER, personally known to me or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature of Notary Public

Place Notary Seal Above

Date: 11/19/01By: 

John S. CANNA

State of New York ss.
County of Clerk

On November 19, 2001, before me, PATRICIA A. GRABIANOWSKI, personally appeared JOHN S. CANNA, personally known to me or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature of Notary Public

Place Notary Seal Above

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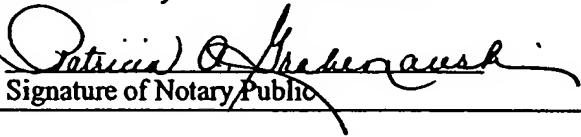
Date: 11/19/01By: Michael T. Kane
Michael T. KANEState of New York)

ss.

County of Crie)

On November 19, 2001, before me, PATRICIA A. GRABIANOWSKI, personally appeared MICHAEL T. KANE, personally known to me or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Signature of Notary Public

Place Notary Seal Above

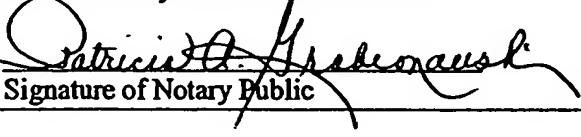
Date: 11/19/01By: Robert Sonner
Robert SONNERState of New York)

ss.

County of Crie)

On November 19, 2001, before me, PATRICIA A. GRABIANOWSKI, personally appeared ROBERT SONNER, personally known to me or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Signature of Notary Public

Place Notary Seal Above

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FISHER-PRICE, INC. : CIVIL ACTION
v. :
GRACO CHILDREN'S PRODUCTS, :
INC. and NEWELL RUBBERMAID, :
INC. : NO. 03-5405

MEMORANDUM AND ORDER

Fullam, Sr., J.

November 19, 2003

Plaintiff seeks a preliminary injunction to prevent the defendant from infringing plaintiff's Patent No. 6,520,862 ("the 862 patent"). Plaintiff asserts that defendant is infringing claims 6 and 7 of that patent.

Claim 6 covers:

"An infant swing comprising:

An upwardly extending frame support post; a swing arm pivotally coupled to an upper end of said frame support post and extending in a downward direction from said upper end of said frame support post; a seat coupled to said swing arm and having an upper seating surface; said swing arm and said frame support post defining a reconfigurable swing area therebetween; and a shield coupled to said seat and extending upwardly from said seat and disposed between said reconfigurable swing area and said seating area."

Claim 7, dependent upon claim 6, covers:

"The infant swing of claim 6, wherein said shield is formed of open mesh fabric."

In order to obtain a preliminary injunction, plaintiff

must establish a reasonable likelihood of success on the merits, irreparable harm if injunction is denied, a favorable balance of hardships, and absence of adverse impact upon the public interest. *Amazon.com v. BarnesandNoble.com*, 239 F.3d 1343, 1350 (Fed. Cir. 2001).

The applicable standard of proof is reasonably clear: "A preliminary injunction is a drastic and extraordinary remedy that is not to be routinely granted," *Intel Corp. v. USLI System Technologies*, 995 F.2d 1566, 1568 (Fed. Cir. 1993). Plaintiff is required to make a clear showing that the patent is valid, enforceable and infringed, *Sprinturf v. Southwest Recreational Industries*, 277 F. Supp. 2d 508, 512 (E.D. Pa. 2003). If defendant raises a substantial question about any of these issues, the injunction must be denied. *Amazon.com*, 239 F.3d at 1350-51.

After carefully reviewing the evidence presented at the hearing of this matter on November 13, 2003, I have concluded that there are, indeed, substantial questions as to the validity of the patent in suit, as well as substantial questions concerning whether defendant is infringing any valid claim of plaintiff's patent. I am, therefore, unable to state with confidence that plaintiff has a reasonable chance of success on the merits.

Both plaintiff and defendant have long been involved in

designing and marketing various juvenile products, including such items as children's swings, baby strollers, portable bassinets, etc. Although plaintiff's patent, having been issued, is presumed to be valid, defendant's witnesses Peter Tuckey and Brian J. Lempia have presented strong evidence to the effect that the patented features of plaintiff's swing would have been obvious to anyone familiar with the industry; that at least some of the features are disclosed in prior art not considered by the patent examiner; and that claim 6 (and therefore dependent claim 7) is, in many respects, invalid for indefiniteness, under 35 U.S.C. §112. The claims in a patent must be "sufficiently precise to permit a potential competitor to determine whether or not he is infringing." *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1342 (Fed. Cir. 2003). Defendant concentrates upon the lack of clarity with respect to the terms "upper seating surface," "reconfigurable swing area" and "seating area." There is also, as noted by Mr. Lempia, a lack of clarity as to whether the "shield" is to be coupled with the seat itself, the (undefined) "seating area", or the padded seat cover (if that is what is meant by "upper seating surface." (The specifications state that it would be "undesirable" to attach the shield to the padding which seems to constitute the "upper seating surface.))

Although neither party has mentioned this issue, and it may seem significant to me only because of lack of expertise in

construing patents, I note that, according to claim 6, the infant swing in question comprises " n upwardly extending frame support post," whereas my inspection of the physical object itself, and my review of the specifications and accompanying drawings, suggest that plaintiff's device has not one, but two, "upwardly extending frame support posts."

Needless to say, I reach no final conclusions as to any of these matters. My ruling is merely that defendant's challenges to the patent's validity appear sufficiently substantial to require denial of a preliminary injunction. Moreover, while infringement of a patent is presumed to give rise to irreparable harm, it seems reasonably clear in the present case that plaintiff would have an adequate damages remedy if validity and infringement are eventually established.

An Order follows.

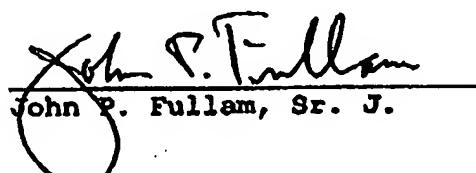
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FISHER-PRICE, INC. : CIVIL ACTION
v. :
GRACO CHILDREN'S PRODUCTS, :
INC. and NEWELL RUBBERMAID, :
INC. : NO. 03-5405

ORDER

AND NOW, this 19th day of November 2003, upon
consideration of plaintiff's Motion for Preliminary Injunction,
and defendant's response, IT IS ORDERED:

That the plaintiff's Motion for Preliminary Injunction
is DENIED.


John P. Fullam, Sr. J.